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Brief for Appellee

In the Supreme Court of the United States.

OCTOBER TERM, [redacted] 1925

No. [redacted] 208

UNITED STATES OF AMERICA, *Appellant*,

vs.

JOSE CANDELARIA ET AL., *Appellees*.

On Certificate from the Circuit Court of Appeals.

APPEAL FROM THE DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO.

FRANK W. CLANCY,
Counsel for Appellees.

CONTENTS

Statement of Case. ---------- 1-3

Authorities cited by Appellees

Pueblo of Laguna v. Pueblo of Acoma, 1 N. M. 220, ---------- 4
De La O. v. Pueblo of Acoma, 1 N. M., 226, ---------- 4
DeBaca v. Pueblo of Santo Domingo, 10 N. M., 38, ---------- 4
Pueblo of Nambé v. Romero, 10 N. M., 58, ---------- 4
Pueblo of Isleta v. Tondre, 18 N. M., 388, ---------- 4
U. S. v. Valdez de Conway, 175 U. S., 60, ---------- 4
Lane v. Santa Rosa, 249 U. S. 110, 112, ---------- 4, 9, 10, 12, 14, 16, 23
People v. Smith, 93 Calif., 490, 29 Pac. 57. ---------- 5, 17
People v. Holladay, 29 Pac. 54, 56, ---------- 5
People v. Beaudry, 27 Pac. 610, ---------- 5
Foust v. Huntington et al., 15 N. E., 337 ---------- 6, 17
Lichty v. Lewis, 63 Fed., 535, 536, ---------- 6
Featherson v. Turnpike Co., 44 N. Y. S. 603, 604-5, ---------- 7
Palmer v. Ins. Co., 30 N. Y. S. 1044, 1049, ---------- 7
Tausiede v. Jumel, 30 N. E. 1000, ---------- 7
Whitcomb v. Hardy, 71 N. W., 263, 264, ---------- 8
North Hempstead v. Hempstead, Hopkins Ch., 288, 293, ---------- 8
Carmody v. Hanick, 85 Mo. App., 659-60, ---------- 8
M'Mullen v. Brown, 2 Hill Ch. 457, 460, ---------- 9
U. S. v. Sandoval, 231 U. S., 48, ---------- 10, 15

Appellant's Authorities discussed, ---------- 12-17
U. S. v. Kamaga, 118 U. S., 375, ---------- 12
Heckman v. U. S., 224 U. S., 413, ---------- 13
U. S. v. Beebe, 127 U. S., 338, ---------- 13
U. S. v. Thompson, 89 U. S., 188, ---------- 14
Tiger v. Western Investment Co., 221 U. S., 286, ---------- 14
U. S. v. Moore, 284 Fed., 89, ---------- 14-15
Coyle v. Oklahoma, 221 U. S., 559-574, ---------- 16
U. S. v. Sandoval 231 U. S. 48, ---------- 17
Statement by Eusebio Aragon as to boundaries ---------- 18-20
Finding of Valencia County district court as to boundaries ---------- 21
Assignments of error criticized ---------- 22-24

In The
United States Circuit Court Of Appeals

FOR THE
EIGHTH CIRCUIT.

No. 6595

UNITED STATES OF AMERICA,
Appellant,

v.

JOSE CANDELARIA ET AL,
Appellees.

BRIEF FOR APPELLEES.

Counsel for appellant, in his brief, devotes a great deal of space to an attempt to show that the Pueblo Indians are a dependent people, wards of the government, the duty of which it is to protect them in their property rights, and that their status was the same under the former governments of Spain and Mexico. This is all interesting, and counsel displays the results of a great amount of research, so set forth as to reflect credit on his already established reputation as a historian, but while appellees do not agree that he has established that for which he contends as to the condition of this class of Indians, yet they decline to enter into a discussion thereof because it is immaterial to anything proper for consideration by this court on this appeal. It may well be suggested, and not flippantly, that all such matter is like "the flowers that bloom in the spring," in the language of one of the Gilbert—Sullivan operas, which have "nothing to do with the case."

Let us now attempt, as briefly as possible, consistent with clearness, to state what this case is, a sshown by the record, and substantially as stated in the brief for appellant.

This is a suit brought by the United States against a large number of defendants to quiet the title in the Pueblo of Laguna, to certain real estate described in the bill of complaint. There is no allegation of any ownership by the complainant of the land which is the subject of the bill of complaint, nor any allegation that complainant has any right, title or interest in said land, but on the subject of ownership the only allegation is that the Pueblo of Laguna is the owner of a tract of land known as the Paguate Purchase, having title thereto by a patent from the United States. On the face of the bill of complaint it is clear that whatever controversy there may be about saidland is one between the Pueblo of Laguna and the defendants, and therefore defendants in their answer have set up as a defense that there has been a former adjudication of any possible issue that can be raised in the present case, in a court of competent jurisdiction, which was the District Court of the County of Valencia in New Mexico and that such adjudication in that court has been adopted and followed in this court in another suit instituted by the same plaintiff which was the Pueblo of Laguna. As already stated, there is nothing in the bill of complaint to show why the plaintiff brings this suit. The only allegation which remotely squints at any reason for bringing this suit by complainant is to be found in the second subdivision of the bill of complaint where itis set out that all the members of the Pueblo of Laguna are wards of complainant, subject to the guardianship and exclusive control of complainant and that the Indians and the Pueblo are without legal right or power to alienate any of their land without the consent and authority of complainant. To these alleagtions the answer of defendants is, in effect, a demurrer, but in order to avoid any misunderstanding as to defendant's position, this demurrer is followed by a distinct denial that the Indians are wards of complainant or subject to the guardianship or exclusive control of complainant or that they are without legal

right to alienate any of their lands without the consent or authority of complainant, and the attention of he court is specially called to the fact that this allegation by complainant of a lack of power to alienate lands is not connected with any thing else in the bill of complaint as there is no allegation of any attempt thus to alienate lands or of any claim of defendants that such alienation has been made or attempted.

The fact, if it were a fact, that the Indians are under the guardianship and exclusive control of complainant, gives no right to complainant to file this bill of complaint for the benefit of the Pueblo which by the bill of complaint itself is correctly alleged to be, under the laws of New Mexico, a corporation, in which the title to the land is vested.

By the allegations of the answer it is made clearly to appear that there has been an adjudication in the District Court of Valencia County, in a suit brought by the Pueblo of Laguna for the same purpose as the present suit and against the same defendants who appeared in that suit, brought for the purpose of quieting the title of the Pueblo of Laguna to the lands described in the present bill of complaint against the claims of defendants, and that that adjudication was to the effect that the Pueblo was not entitled to any relief against defendants and that its complaint should be dismissed. The purpose of that suit and of the present one is the same.

It is further shown by the answer that later, on the 17th day of March, 1916, the said Pueblo began another suit against defendants in the court below, for precisely the same purpose as in their first suit and in the present suit, praying the same relief, and that the court below dismissed said last mentioned suit because it had been fully adjudicated in the District Court of Valencia County; and we thus have a second former adjudication of the controversy which is sought to be renewed in the present case.

POINTS AND AUTHORITIES.

FIRST

The former adjudications are a bar to the prosecution of this case.

There does not seem to be any possible way for complainant to avoid the effect of these former adjudications unless it should be by an attempted denial of the power of the Pueblo of Laguna to bring any suit whatever in any court, but such an attempt would be manifestly inconsistent with the allegation in the bill of complaint that the Pueblo is a corporation created and existing under the laws of New Mexico, especially if we refer to the law which created the corporation, originally enacted in 1847 and now to be found in section 2784 of the Codification of New Mexico Statutes in 1915 and which distinctly declares that the Pueblos may sue and be sued, plead and be impleaded, bring and defend in any court of law or equity, all such actions, pleas and matters whatsoever, proper to recover, protect, reclaim, demand or assert the right of such inhabitants or any individual thereof, to any lands, tenements or hereditaments, possessed, occupied or claimed contrary to law, by any person whatsoever.

This right of the Pueblo to sue and be sued is so clearly recognized by the courts of New Mexico and even by the Supreme Court of the United States that it cannot now be considered as in any way doubtful.

Pueblo of Laguna v. Pueblo of Acoma, - N. M. 220.
De la O v. Pueblo of Acoma, 1 N. M. 226.
De Baca v. Pueblo of Santo Domingo, 10 N. M. 38.
Pueblo of Nambe v. Romero, 10 N. M., 58.
Pueblo of Isleta v. Tondre, 18 N. M. 388.
U. S. v. Valdez de Conway, 175 U. S. 60.
Lane v. Santa Rosa, 249 U. S. 110, 112.

Attention is specially called to the above cited case of Pueblo of Nambe v. Romero which bears a striking resemblance to the present case, having been brought by the Pueblo seeking to quiet title and to restrain trespasses, and it appears that the de-

fendant claimed under a deed from the Pueblo made in 1854, but the court held that it was unnecessary to determine the question of the validity of that deed as the adverse possession shown was sufficient to vest in appellee a title to the premises. In the present controversy, the District Court of Valencia County held that the long continued possession of defendants was sufficient to bar the action of the Pueblo. That the adjudication against the Pueblo of Laguna, a corporation, is binding on the appellant, ought to be obvious, no matter what may be the status of the Indians, but there are some authorities which are interesting, to say the least.

In People v. Smith 93 Calif., 490, 29 Pac. 57, it was decided that a judgment in favor of Smith against the city and county of San Francisco, was an estoppel against the State, which, upon the relation of a citizen, sued Smith to abate a nuisance which consisted of a building on what was claimed to be a street, the former adjudication being that the land where the house stood, belonged to Smith. This decision merely follows People v. Holladay, 29 Pac., 54, 56, in which the court held that a similar judgment against the city and county of San Francisco in an action brought by the city and county, was a bar to the action of the State, the court saying

> "We entertain no doubt that the City and County of San Francisco has the authority to maintain an action for the purpose of preserving the rights of the general public to the use of squares, or land claimed as such, within its limits and that in such action it is authorized to put in issue the alleged rights of the people to such easement, and that the State itself is bound by the result of such litigation, if the same is not collusive. The rule that the citizen shall not be twice vexed for the same cause of action, is binding upon the State as upon other litigants."

See also People v. Beaudry, 27 Pac., 610.

In Indiana, appellant instituted a suit against a city and two individuals, to obtain an injunction against the extension of improvement of a public street over land which she claimed and to

have it adjudged that the city had no authority so to extend the improvement. The defendants filed a joint answer of a former adjudication, in a suit in which appellant was plaintiff and the city and its civil engineer were defendants, in which the identical matters set up in the complaint were adjudicated against appellant and in favor of defendants, and that the two individuals then sued were the marshal and an employe of the city acting under its authority in making the improvement. Objection was that the parties were not the same, but the court held that the city was the real party in interest and that the former adjudication was conclusive against appellant.

Foust v. Huntington et al., 15 N. E. 337.

In Washington, a man and wife brought ejectment to determine adverse claims to real estate which was claimed to be community property. Defendants pleaded that, in a suit between one of the defendants and the husband, all questions involved were adjudicated by a decision against the husband. The objection was that the parties were not the same and that the judgment could not bind the wife. The court said

> "I do not think that the same question can be again litigated without establishing a principle which would be pernicious. To allow a married man to come into a court of competent jurisdiction and submit a controversy for final determination, and, being defeated, then bring his wife into court, and go through the same litigation over again would be harassing, and prejudicial to the best interests of the public.

Lichty v. Lewis, 63 Fed. 535, 536.

A woman sued a Turnpike Company for damages caused by her falling over an obstruction in the public highway maintained by the defendant, and the defendant pleaded that the obstruction was placed and maintained by one Shaffer, and that plaintiff had already sued Shaffer and judgment in that action had been en-

tered in favor of Shaffer and against her. The court held that the former judgment was a bar, the relation between Shaffer and the defendant being analogous to that of principal and agent, or principal and surety, or master and servant.

Featherson v. Turnpike Co., 24 N. Y. S. 603, 604-5.

The syllabus in a New York case is as follows:

> "A judgment in an action by several plaintiffs is, in a subsequent action by one of such plaintiffs only against the same defendant, res judicata as to issues involved in the first action."

In the opinion, the court, after stating what was essential for the plaintiffs to establish, speaks as follows:—

> "Those issues were directly involved on the trial of that action, and decided in favor of the plaintiffs. Hence, they cannot be litigated again in this action, and the learned trial Judge properly excluded evidence to show to the contrary of the facts established by the judgment."

Palmer v. Ins. Co., 30 N. Y. S., 1044, 1049.

In another New York case, in the Court of Appeals, the syllabus is as follows:

> "An action was brought by a person entitled to his interests in certain trust property for the purpose of fixing the rights of the several claimants and afterwards another action was instituted by another claimant for the same purpose, in which action the parties were the same as in the earlier action, except that there was to the later action one additional party. The same facts were before the court in both actions. The court held that the judgment in the earlier action was conclusive on all the parties to the later action."

Tausiede v. Junel, 30 N. E., 1000.

As to the degree of particularity required in pleading a former adjudication, see

Whitcomb v. Hardy, 71 N. W., 263, 264.

The issuance of a patent to the Pueblo of Laguna for its lands, constituted the Indians of that Pueblo a body corporate capable of receiving and holding the lands conveyed even if the Pueblo were not already a corporation.

North Hempstead v. Hempstead, Hopkins Ch., 288, 293.

And it was a distinct recognition by the United States of the existence of the Pueblo as a body corporate under the legislation of the Territory of New Mexico. Attention is called also to the Act of Congress of December 22, 1858, whereby Congress had recognized the existence of these bodies corporate when it confirmed their claim for land to sixteen Pueblos by name. The territory had made them corporations by the legislation of 1847, and, by this Act of 1858, Congress recognized and approved that action of the territorial legislature.

In a Missouri case, the first paragraph of the syllabi is as follows:

> "Where the interests of parties in the prosecution of a suit are mutual although the suit is in the name of one of the parties, both are represented and both are equally estopped to deny any of the issues adjudicated therein in any suit between them jointly or singly on the one side and the same defendant on the other side."

Carmody v. Hanick, 85 Mo. App. 659-60.

In 1836, in the Court of Appeals of South Carolina, in an opinion by Justice Johnson there appears the following language:

> "Judgments and decrees of courts of competent jurisdiction directly on the point in controversy, are admissible

in evidence, not only between the parties, but all persons standing in the relation of privies in blood, in estate, or in law. And I understand by the term "privies" when applied to a judgment or decree, one whose interest has been legally represented at the trial."

M'Mullen v. Brown, 2 Hill Ch. 457, 460.

SECOND.

Whether the judgment of the Valencia county court, were correct or not, does not affect its validity as res judicata.

Much argument is made for appellant in an attempt to show the invalidity of the Valencia county judgment, but the foundation of that argument is, in brief, that the Pueblo of Laguna had no authority to begin any suit as to its lands, without the participation of the government therein. This cannot be reconciled with the decision in the case of Lane vs. Santa Rosa, 249 U. S. 110, by the court of last resort, which declares that such Pueblos have unlimited power to sue under the statute of New Mexico. That case is hereinafter further considered.

The Valencia county judgment remains in full force, and cannot properly be here reviewed. It could have been reviewed, but never was, by appeal to th Supreme Court of New Mexico and possibly by writ of error from the Supreme Court of the United States.

THIRD.

The argument of appellant, if sustained, would be destructive of the Pueblo Indians.

The argument contained in the appellant's brief is in harmony with what appears to have been the settled determination of that portion of the executive department of the United States charged with the administration of Indian affairs, to reduce the civilized Pueblo Indians to the status of what the Spanish-speaking people call wild Indians, (Indios bravos), such as the Apaches, Navajos and Comanches, and the authorities cited so far as they relate to any Indians, relate to Indians of those classes, with the exception

of the Sandoval case in 231 U. S., 38, and they are therefore quite inapplicable to the Pueblo Indians. The point sought to be established is that the Pueblo Indians, like the Cherokees and other similar Indians, are in a state of dependent tutelage, and have practically no existence of their own which would entitle them to any standing in the courts without the intervention of the U. S. Government and it is argued that the proceedings in the district court of Valencia County, in a suit brought by the Pueblo of Laguna, concerning the same land as to which the present suit is brought, are void, and of no effect, because the government was not a party to the suit. It is to be noted that no reference in appellant's brief is made to the case of Lane vs. Santa Rosa, 249, U. S., 110, upon which the court below rested its decision that the Pueblo had a right to sue as it did, and which is in effect, a complete answer to the whole of appellant's argument on that point in its brief. The omission to make any reference to that case, may, perhaps, be considered as an exercise of the better part of valor, as the opinion distinctly declares that the Indian Pueblo, during the Spanish as also Mexican dominion, enjoyed a large measure of local self-government and was regarded as having capacity to acquire and hold lands and other property and that with much reason this might be regarded as enabling and entitling it to become a suitor for the purposes of enforcing or defending its property interests. The Court, however, goes on to say that its decision need not be put on that ground, for there is another reason arising out of our own laws which is in itself sufficient. That ground is to be found in the early legislation of New Mexico, which reappears as Sec. 2784 of the Codification of 1915, and the court goes on to say that after the Gadsden treaty by which the United States acquired that part of the country where the Pueblo of Santa Rosa is located, Congress made that part of the country part of New Mexico and subjected it to all the laws of that territory, and follows this with the statement that if the Pueblo was not a legal entity and juristic person before, it became such under that law and the court further says that the fact that Arizona has since become a state does not

affect the Pueblo's corporate status, or its power to sue. Attention should be called to the fact that the provision in the Enabling Act under which Arizona became a state, with regard to the Pueblo Indians and their lands, is the same as the provision of that act with regard to New Mexico.

The Congress of the United States in the Act entitled "An Act to quiet the title to lands within Pueblo Indian land grants and for other purposes" which was approved June 7, 1924, has substantially recognized the pre-existing right of Pueblo Indians of New Mexico to maintain suits in any court of competent jurisdiction to assert their title and right to land, in the fourth paragraph of section 4 of said act, and of the right of any Pueblo or Indians to act in court independent of the government, in the sixth paragraph of section 4 thereof.

If a Pueblo has the right to sue in an effort to protect what it claims to be its rights, certainly it must be bound by the result of that litigation, if unsuccessful. If it has a right to proceed by suit, then the court must have jurisdiction over it, and jurisdiction includes the power to decide upon what is contested in any such suit. It would be great folly to hold that a litigant has a right to sue but that anadverse decision would be void. In the Santa Rosa case there is no hint of limitations upon the right of the Indian Pueblo to sue with regard to its lands and a reference to the opinion will show that the same sort of argument now submitted to this court was made by defendants in that case and the opinion of the court plainly indicates that the Indian Pueblos are not to be classed with Indians like Cherokees, Navajos and Apaches, none of which, under any government, had any distinct entity which would permit them to bring suit in the courts to protect any of their claimed rights. Bearing this distinction in mind, we will proceed to an examination of some of the authorities in Indian cases cited in appellant's brief, and we will find that they are not at all applicable to the Pueblo of Laguna with the exception of the Sandoval case, which however, throws no light upon the

disputed question as to whether the Indian Pueblos have the right to bring a suit to protect alleged rights to their lands.

One of the cases cited is that of the U. S. vs. Kamaga, 118 U. S. 375. The question decided in that case was one merely of jurisdiction of the U. S. courts of the crime of murder committed by an Indian, who murdered another Indian in California within the limits of an Indian Reservation. The opinion stated that there were six questions certified by the circuit and district judges holding the circuit court for the District of California and that the point of them all was set out in two of them which merely involved the question of the jurisdiction of the courts of the United States to try and punish an Indian for the crime of murder upon another Indian, belonging to the same Indian tribe, the crime having been committed upon the Indian Reservation set aside for the use of the tribe to which both Indians belonged, and this question arose under the provisions of an act of Conrgess of March 3, 1885, Sec. 9, the first clause of which provided that Indians committing against the person or property of another Indian or other persons any of certain enumerated crimes within any Territory of the United States and either within or without the Indian reservation should be subject therefor to the laws of said Territory relating to said crimes and be tried in the same courts as are other persons charged with the commission of said crimes, but in the second clause it provided that all such Indians committing any of said crimes against the person or property of another Indian or other person within the boundaries of a State and within the limits of an Indian reservation should be tried in the same courts as all other persons committing any of the said crimes within the exclusive jurisdiction of the United States. The court said that these Indian Tribes are the wards of the nation and are communities dependent on the United States for their daily food, and for their political rights. It will be seen that such Indian Tribes are quite different from the Indian Pueblos as described in the case of Lane vs. Santa Rosa, 249 U. S., 119. The Court held that the act of congress was valid and that the United States court

had jurisdiction of the offense charged, but there is nothing in the opinion which can properly be considered as applicable to the Indian Pueblos.

Another case cited is that of Heckman vs. U. S., 224 U. S., 413, which is cited to sustain the position that the sovereign duty of the government to its wards is the basis for the institution of suits of this character. The Heckman case was one brought by the United States to cancel conveyances of lands of the Cherokee Indians upon the ground that they were inviolation of existing restrictions upon the power of alienation. The opinion shows that the conveyances were executed by members of the Cherokee Tribe, of lands allotted to them in severalty, and that the statute under which the allotments were made provided that the lands should be inalianable for a period specified. It will be seen at once that this was a case of lands granted to the Indians by the government under a restriction and the court held that that restriction was valid and that the Indians could not alienate their allotted lands, but this has no application to the Pueblos, each of which has a grant of land from the United States, withou any condition or restriction, and moreover, in the present case there is no question as to an attempt by the Indians to alienate their lands.

Another case is of the U. S. vs. Beebe, 127 U. S., 338, from which a quotation is made to the effect that the United States is not bound by any statute of limitation nor barred by any laches in a suit brought to enforce a public right or serve a public interest. The court held that where the government is a mere formal complainant and not the real party to the title of the property in controversy, the defense of the statute of limitations and laches and lapse of time may be successfully interposed, and in that particular case the court held that the government was a mere formal complainant in the suit and therefore affirmed the decree of the court below which dismissed the case. In the present case it is to be recalled that the government is not the real party in interest but that the Pueblo of Laguna is that party and that

that Pueblo of Laguna under the decision of the case of Lane vs. Santa Rosa, is an entity and juristic body capable of suing to protect its alleged rights and that it did so sue in the District Court of Valencia county and was there defeated. It is difficult to see that this Beebe case gives any support to the argument of appellant, but on the contrary it rather appears to be an authority in favor of the defendants.

Another case cited is that of U. S. vs. Thompson, 89 U. S. 488. That case decides nothing more than that the statute of limitations cannot bar the United States. It merely re-affirms the familiar rule that time cannot run against the sovereign, but in the present case the real defense is that the matters presented by the complainant have been already adjudicated by a court of competent jurisdiction in a suit brought by the real party in interest, the Pueblo of Laguna, which was competent to bring such suit as shown by the decision in the case of Payne vs. Santa Rosa, 249 U. S. 110.

The next case cited is that of Tiger vs., Western Investment Co., 221 U. S., 286. This was a case involving the validity of conveyances made by Tiger, plaintiff in error, a full blood Indian of the Creek tribe. The conveyances were made without the approval of the Secretary of the Interior, Tiger having inherited the land conveyed from relatives who were also full blooded Creek Indians to whom the lands had been allotted. The act of Congress under which the allotments were made, contained a restriction as to alienation of allotted lands, and the court held that this restriction was valid. Attention is again called to the fact that there is nothing to be found anywhere which makes the Indian Pueblos anything like the tribe of Creek Indians and also that there is nothing in the present case as to any attempt at alienation of lands by the Pueblo.

Another case cited is that of U. S. vs. Moore, 284 Fed., 89, but this was a case involving the rights of a full blood Quapaw

Indian, and was brought to recover from Moore a large sum of money which he had received as royalties upon the assignment by the Indian of a right to royalties under a lease of land which he had given. The court held that under Congressional restrictions the Indian had no right to make the lease and that the government could maintain the action for the recovery of the money and that its interest was not pecuniary but governmental in the discharge of its duty to the Indians, assumed because these Indians were under national tutelage, and Congress had expressly declared that they might not dispose of their lands. It certainly requires a great power of imagination to see how this case applies to the Pueblo of Laguna, as to which no such duty has been assumed and nosu ch express declaration made, by Congress. There is no way by which the Pueblo of Laguna, in the light of the case of Payne vs. Santa Rosa, can be classed with the Quapaw Indians or any other class of Indians. There certainly has been no action by congress in the exercise of its jurisdiction over Pueblo lands, reserved in the enabling act, which puts the Pueblos in a state of tutelage, or in any way interferes with, or impairs the Pueblo title to lands which is a fee simple title (U. S. v. Sandoval, 231 U. S., 48,) or the right of the Pueblo to bring suit to protect its rights.

The enabling act does not go quite so far as is asserted at pages 25-26 of the brief for appellant. It declares in section 2 thereof, that the people of the proposed State should agree to disclaim all right or title to all lands "owned or held by any Indian or Indian tribe, the right or title to which shall have been acquired through or from the United States or any prior sovereignty and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States." Up to the time of the decree in this case, no action had been taken by Congress in the exercise of its jurisdiction and control reserved in the enabling act as above quoted. As long as Congress does not act in this matter the Pue-

blo lands remain subject to the legislation of the Territory and State of New Mexico.

It is quite unthinkable that the Pueblo lands should be left without any protection, or the Pueblos left without any power to bring suit to protect their rights because Congress has reserved to itself absolute jurisdiction over those lands and has never in any way exercised that jurisdiction. Here again the case of ~~Payne~~ Laguna vs. Santa Rosa indicates that, notwithstanding this reservation of jurisdiction by Congress, an Indian Pueblo has authority under the legislation of New Mexico to bring suits to protect its rights to lands, just as that legislation distinctly declares that it may.

Another case cited is that of Coyle vs. Oklahoma, 221 U. S., 559-574. In the Co-operative edition this case is reported under the title of Coyle vs. Smith. This is the celebrated case upholding the power of the legislature of the State to remove its capital from Guthrie to Oklahoma City, notwithstanding a provision in the enabling act that the capital should not be changed previous to 1913, the act of the legislature making the change having been adopted Dec. 7, 1910. There is to be found in the opinion some interesting obiter discussion of the power of Congress, in connection with the admission of new states to the union, but if there is anything therein contained which can be of the slightest assistance in determining the essential question in the present case, I must admit my inability to find it.

The essential question here is as to whether the Pueblo of Laguna had any right to institute a suit in the District Court of Valencia County to obtain the same relief, in substance, which the plaintiff seeks in the present case, and, if it had such right, is not the result in thatcourt *res judicata* and a bar to the present suit? In the light of the opinion in the case of Payne vs. Santa Rosa there can be nodoubt that the Pueblo had the right to bring such a suit, but the suggestion is now made that it had no such right, and that all the proceedings in that suit are void,

because the United States was not in any way made a party. There is much argument made on behalf of appellant to show that the statute of limitations cannot be urged as a defense to any suit brought by the government and that this doctrine is equally applicable to a defense based upon laches or former adjudication. The same line of argument would be equally applicable in the California and Indiana cases hereinbefore cited, where it was decided that judgments against cities or counties constituted an estoppel against the state, and also in the case of U. S. vs. Beebe, 127 U. S. 338, hereinbefore reviewed.

People vs. Smith, 93 Calif. 490
Fourst vs. Huntington, 15 N. E. 337

Another case cited in appellant's brief is that of U. S. vs. Sandoval 231 U. S., 48. In effect all that was decided in that case was that the provision in the enabling act that the laws prohibiting the introduction of liquor into the Indian country also included the Pueblo Indians and their lands, was a valid exercise of power by Congress and that, being a legitimate exercise of power, it did not encroach upon the police power of the state or disturb the principle of equality among the states.

The foregoing review of cases cited by appellant, covers all of them which refer to Indians, and fully justifies the assertion, hereinbefore made, that they relate only to the Wild Indians, none of whom have ever had any such distinct entity as would permit them to bring suit in the courts to protect their rights as the Pueblos can, and therefore those cases throw no light upon the principal matter here to be discussed which is as to whether the former decisions in the Valencia district court and in the United States District Court are res judicata as to what is involved in the present case.

FOURTH

Morally and equitably the decision of the district court of Valencia County deprived the Indians of nothing to which they are entitled.

This is a matter somewhat aside from the main question as

to the effect of that decision as res judicata of the matters presented in the present case, but there is so much sentimental bosh about the wrongs done to the Indians,—much of which is unfounded, as in this case of Laguna,—that it is some satisfaction to demonstrate that no injury has been done to the aborigines.

As an exhibit attached to and made a part of the bill of complaint, is a copy of the patent to the Pueblo of Laguna for the land known as the Paguate Purchase which is the subject of the present suit, and in that patent, the copy of which begins on page 9 of the record, is embodied the opinion of the Surveyor General of New Mexico which was the foundation of the confirmation by Congress of the claim for said land, and in that opinion, at page 10 of the record, as a part of the record of the title which the Surveyor General approved, appears the following:—

> "Document B purports to be a statement made by Eusebio Aragon to the effect that he was a witness to the establishment of certain boundaries of the Paguate Rancho by Ignacio Sanchez Vergara, Protector of the Indians, in 1820, which boundaries had been omitted in the deed made in 1769."

The above quoted paragraph appears at page 166 of the House of Representatives Executive Document No. 14 of the 1st Session of the 30th Congress, to which reference is made for a clear understanding of the language quoted. A translation of said document B appears on pages 159-160 of the same Congressional Document, and reads as follows, slightly disfigured by some typographical errors:

GRANT NO. 2.— TRANSLATION.

> "In this year one thousand eight hundred and twenty, Don Ignacio Sanchez Vergara, protector general of the Indians of this province of New Mexico, executed a document alike to the instrument authorized by Don Antonio Tedillo, in the year one thousand seven hundred and sixty-nine; and for not stating three boundaries which said protector did not mention in his document, the par-

ties mentioned in said document requested me to make a copy thereof, stating the boundaries to which the rancho of Paguate is entitled, which document is of the tenor following:

For this Pueblo of Jemes, on the 1st day of June, in the year one thousand eight hundred and twenty, a document authorized by the former Alcalde of the Pueblo of Laguna was presented to me by Lorenzo and Alonzo Santiago, Alonzo the second, Torribio and Rita, native Indians of said Pueblo, requesting me to take charge of the interests they represented in the rancho called Pagnasti; and having registered it, I find that Don Antonio Sedillo, the said alcalde at that time, took cognizance of a suit brought by Juan Pagnasti and Pascual Pajarito, both residents of said Pueblo, and it was ordered that each one should quietly remain upon his own property, without disturbing each other.

Such being the case, and as protector of the Indians for the royal audience of Guadalajara, to whom alone it is proper for the Indians to refer matters of a common or a private nature if they are in any way aggrieved, or if they have not sufficient amount of land with what the laws allows them, or that they may have legally acquired, and by virtue of the ancient possession of said land to which the said natives refer, called the rancho of Pagnasti, acquired by a legal title, and that the new settlement of Cebolleta, granted by Governor Don Fernando Chacon to certain citizens, and possession given by the alcalde Don Jose Manuel Aragon, with the formalities required by the laws of possession and settlement, the boundaries having been marked out. The aforesaid ranch and its boundaries in the direction of Cebolleta remained free with its ancient appurtenances as far as the table-land of El Gabilan, on the south to La Cuesta, and on the west to the Rito de San Jose, and on the east to the Cañoncito del Cajo.

The new settlers of Cebolleta were satisfied with their boundaries at the table-land of El Gabilan, adjoining the holders in good faith.

The want of land by these Indians is to be taken in consideration, and that the tract of Pagnasti is the only one in a measure aids them with a scant produce in their misery; and although at the commencement they had more land extending as far as El Rito, they were restricted by Don Juaquin Pino to a tract of waste land, he having deprived them of the said land by virtue of a right to it held by his late father, whom he represents, but which land had been abandoned for more than thirty years. Nevertheless, his title was recognized, and they are so much reduced that the only aid they received is from Pagnasti, where the principal owners cultivate the soil in common with the Pueblo, and those who have no lands to cultivate for their support are in a measure relieved.

All of which has been well premeditated and considered, and will be shown whenever an effort is made to injure them by depriving them of the ancient possession of Pagnasti. There is no doubt that, presenting themselves in person or through their protector to the Superior Audience, they will be allowed to remain in peace, in the enjoyment of what is unquestionably theirs. In testimony whereof, and in compliance with the duties so repeatedly enjoined upon me by the royal laws of the recopilation of the Indies, I executed this document for their protection, as protector of the Indians who are so highly recommended to me by the attorney, protector general of the Indians, and for its due authenticity I signed on the said day, month, and year.

I signed this as a witness to the truth of the statement made by the protector.

Santa Fe, August 28, 1826. Eusebio Aragon.

It will be seen that this statement of Eusebio Aragon, as protector of the Indians, distinctly declares that the northern boundary of the Paguate Rancho was the table-land of el Gabilan, which is, in Spanish, la mesa del gabilan, or the mesa of the hawk,

with which "The new settlers of Cebolleta were satisfied." It would seem that those settlers and the Indians were in attendence and must have agreed to what was done. Moreover, the Mesa del Gabilan was a south boundary call of the Cebolleta Grant as stated in paragraph 4 of the answer on page 24 of the record, that grant being that under which appellees claim.

Wherefore it cannot be doubted that the Mesa del Gabilan was in 1820 the dividing point between the Cebolleta Grant and the Paguate Purchase, and was so recognized by the adjoining owners, and as the confirmation by Congress "shall only be construed as quit-claims or relinquishments on the part of the United States and shall not affect the adverse rights of any other person or persons whomsoever" (Record, page 20), that Mesa must be the proper boundary today.

Now, the district court of Valencia county, (Record, page 36) made the following finding of fact:—

> "The Court further finds that the Mesa del Gabilan, which is one of the calls for the south boundary of the Cebolleta Grant, lies to a considerable distance southeast of the Indian town called Paguate, and that the junction of the Cañada of the Zia Road and the Cañada de Pedro Padilla, which is the other call for said southern boundary for said Cebolleta Grant, lies directly east from said Mesa del Gabilan, the line through said Mesa and the point of junction of the said Cañadas being the true boundary line of the Cebolleta Grant being a part of the tract of land described and set forth in the complaint in this case."

But the appellant contends, as appears from some of its erroneous assignments of error, which will be hereafter discussed, that the erroneous survey of that boundary is of such sacred and conclusive character as to be binding on the whole world, although it would deprive the Cebolleta owners of their land without due process of law.

It may be conceded that there are authorities to support this doctrine, shocking as it may be to our sense of justice; but that is something outside of the scope of the contention now made here, which is limited to an attempt to show that honestly and equitably the Indians are not losing anything to which they are morally entitled. Their boundary was fixed by proper authority over a hundred years ago, with their concurrence, and when we consider the customs of such people as these Indians, we can have no doubt that among them knowledge of that boundary has been actually preserved, so that they know what their rights really are, within which they have acted until this litigation began in 1910, which was probably not actually initiated by them but by the unscrupulous office of Indian affairs.

FIFTH

Some of Appellant's Assignments of Error, are inaccurate, misleading and unfair to the Court below.

The first assignment (Record page 43) is that the court erred in holding and finding that the judgment of the Valencia county district court was not inconsistent with the guardianship relation sustained by the United States over its wards, the Indians of the Pueblo of Laguna.

The court did not so hold, which would have appeared to be a recognition of the existence of such a guardianship relation; but actually did hold (Record, page 42), "that the statute giving power to Pueblos to bring suit in their own names, is not inconsistent with guardianship of any kind, of the Indians by the government."

The second assignment of error, (Record, page 43) is, abbreviated, that the court erred in holding that any suit brought by the Pueblo was not inconsistent with the guardianship relation of the United States.

The court did not so hold, and the above statement as to the first assignment is equally applicable to this one.

The fourth assignment of error (Record, page 43,) is that the court erred in holding that the judgment of the district court for Valencia county had jurisdiction of the subject matter of said suit and of the parties thereto and that its judgment therein was a final and complete adjudication of the matter presented in that suit.

What the court held (Record, page 42.) was that the district court of Valencia county was a court of general, unlimited jurisdiction and had jurisdiction of the subject matter and of the parties in the said suit instituted in said court by the Pueblo of Laguna in 1910, and that its decree therein was a final adjudication of the matters presented in that suit and binding on the parties thereto, and was a complete adjudication of the matters presented by the bill of complaint in the present suit, and operates as a bar to the prosecution of this case," which was a logical and necessary holding in view of the previously cited authoritative and controlling decision in the case of Lane vs. Santa Rosa, 249 U. S., 110.

The sixth assignment of error (Record, page 44,) is that the court erred in holding that the district court for Valencia county had jurisdiction for the entering of a decree setting aside and holding for naught a survey made by the United States of a confirmed Spanish or Mexican land grant, and that such a decree could be binding upon or conclusive against the United States.

The court did not so hold, and nothing of the sort can be found in its judgment on pages 41 and 42 of the Record which sets out all that the court did, nor did the district court of Valencia county enter any such decree as is described in said sixth assignment, as will be seen by reference to pages 33 to 38 of the record. That court, in the 7th and 8th subdivision of its judgment, (Record, page 36) found as a fact, the error in the survey merely as matter preliminary to its 9th finding of the possession by defendants, from a period beyond the memory of any living man, of the land between the true line and the surveyed line of the Cebolleta grant, and as a foundation for such possession and

explanatory of it, which operated as a bar under the statute of limitations.

The 7th assignment of error is that the court erred in holding that the district court of Valencia county had jurisdiction to set aside the survey of the south boundary of the Cebolleta grant and the north boundary of the Paguate Purchase.

The court made no such holding (Record, page 41 and 42), nor did the Valencia county district do any such thing as is described in said 7th assignment (Record, pages 36 to 38.)

The 8th assignment of error is that the court erred in holding that it was not essential to the final decree of the district court of Valencia county that it should attempt to correct and alter the boundaries of the Cebolleta grant and Paguate Purchase as established by official survey.

The court did not make any such holding (Record, page 41 and 42), but it is true that it was not essential to the judgment of the Valencia county district court that it should attempt to alter the boundaries as established by official survey, nor did it make such attempt, as hereinbefore shown in the criticism of the sixth assignment of error.

The 9th assignment of error is that the court erred in holding that the United States cannot maintain this suit for the reason that it has no sufficient interest in the subject matter thereof.

The court did not so hold (Record, page 41 and 42,) but merely held, in substance, that the prosecution of this case was barred by former adjudications of all matters presented by the bill of complaint herein.

It is respectfully submitted that no error is to be found in the proceedings and judgment of the court below, and that the judgment of the court below should be affirmed.

FRANK W. CLANCY,
Solicitor and Counsel for Appellees.

INDEX OF SUBJECTS

	Pages
Errors in the Record	1 to 3
Former adjudications at bar,	4 to 7
This Court has held it has no jurisdiction,	7

INDEX OF CASES CITED

Lane v. Santa Rosa, 249 U. S. 110,	4,6,7
People v. Smith, 93 Calif. 490.	6
People v. Beaudry, 27 Pac., 610	6
Foust v. Huntington, 15 N. E. 337	6
Lichty v. Lewis, 63 Fed., 535, 536	6
Palmer v. Ins. Co., 30 N. Y. S. 1044, 1049	6
Tausiede v. Jumel, 30 N. E. 1000	6
Carmody v. Hanick 85 Mo. App. 659-60	6
M'Mullen v. Brown, 2 Hill Ch. 457, 460	6

BRIEF FOR APPELLEES

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1925

No. 208

UNITED STATES OF AMERICA

vs.

JOSE CANDELARIA ET AL.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

STATEMENT AS TO ERRORS IN RECORD

There are some inaccuracies in the record, which is, of course, only the certificate of the Circuit Court of Appeals, which, from my point of view, are misleading and confusing and ought to be corrected, and to which I have called the attention of he Solicitor General, and have from his office a letter dated September 12, the purport of which will be hereinafter stated. This is preliminary to a discussion of the record and is necessary to an understanding of what is to be considered. The inaccuracies are five in number, and are as follows:—

First, in line 20 of page 3 of the printed record, the first word in the line should be "southern instead of southeast."

Second, in lines 23 and 24 of said page 3, the word should be "southern" instead of "southeast."

Third, in line 30 of said page 3, the word should be "northern" instead of "northeast".

Fourth, in line 32 of said page 3, the word should be "northern" instead of "northeast."

Fifth, the paragraph near the top of page 4, in lines 3 to 7, entirely misstates the holding of the District Court of Valencia Coun-

ty, New Mexico, as stated in the answer, as that court did not hold that a conflict existed between the southern boundary line of the Cebolleta Grant as surveyed and the northern boundary line of the "Paguate Purchase", constituting an overlap to which those claiming under the Cebolleta Grant had the superior title", nor did the answer of the defendants, now appellees, which the said Circuit Court of Appeals on pages 2 to 4 of its certificate, purports to set forth, contain anything to justify the statement in said paragraph, as said answer, and as appellees now assert to be the fact, stated in effect that the holding of the District Court of Valencia County, was, that the Mesa del Gabilan was one of the south boundary calls of the Cebolleta grant and was the north boundary call of the "Paguate Purchase"; that the surveyed line of those tracts was far to the north of the said Mesa del Gabilan, and that the land between the south boundary of the surveyed line of the Cebolleta Grant and the true south boundary of the Cebolleta grant at the Mesa del Gabilan, running thence east to the point of the junction of the Cañada of the Zia road, and the Cañada de Pedro Padilla, which is the other call for the southern boundary of said Cebolleta grant, and the line through said Mesa and the point of the junction of the said Cañadas, has been from a time beyond memory of any living man, in the open, notorious and exclusive possession of the defendants and their ancestors and predecessors in title, which is quite different from what is set up by the Circuit Court of Appeals in the said paragraph near the top of the page 4 aforesaid, and the answer did not state that the Valencia County District Court held that, as to said land, those claiming under the Cebolleta grant had the superior title.

After presenting the foregoing errors, as I alleged them to be, to the Solicitor General, with some discussion as to the proper method of making corrections, I received the letter hereinbefore referred to, of September 12, 1925, which was from Alfred A. Wheat, Acting Solicitor General, in which he said that he agreed with me that the record is in error in the particulars which I specified as items first to fourth, but that it seemed to him that they were immaterial, and that he could not see that they would in any

way affect the questions presented by the certificate, and that, as to item fifth, it appeared to him that it was merely the Circuit Court of Appeals' construction of what the state or territorial Court had held in the previous suit. He further said that, at the time of the argument, he would be perfectly willing to agree orally that the record does contain these errors which I designated in items first to fourth; and that, as to the matter designated fifth, he thought that was a subject which I could argue to the court. I will, therefore, on paper say no more as to the items first to fourth. I assume that the concession made as to those four items, is based upon the comparison of my suggestions with the printed record used in the Circuit of Appeals, which I asked the Solicitor General, in a letter of August 31, 1925, to cause to be made, as in no other way could the errors be discovered. I may say here that I received the record on August 28.

As to the fifth item, an examination of the printed record will show that from the beginning of the paragraph near the foot of page 2 to the end of the paragraph just above the figure 6 on page 4, the Circuit Court of Appeals attempted to set forth what was pleaded in the answer of defendants, so that the correction suggested in said fifth item is in form correctly stated, as the paragraph on page four to which objection is made, is part of the attempt to set forth the answer of defendants: but even if it is not, and is, as suggested by the Acting Solicitor General, merely the court's "construction of what the state or territorial court had held in the previous suit," it is equally erroneous, as the state court never held anything like what that paragraph sets forth, and I call upon the Solicitor General, in the interest of fair play and a proper presentation of the case, to make the same sort of examination of this item and a comparison of it with the record in the Circuit Court of Appeals which he must have made as to the other items, and to state to this court the result. He will find that the correction suggested in my fifth item is well founded, whether it be limited to what is set forth in defendant's answer, or extended to what was actually held by the state court, and I call his attention to the allegations of the answer onpages 21 and 22 of that record, and to that part of the judgment of the state court which relates to that part

of the controversy which is the subject of the present suit, which will be found on pages 36-37 and pages 37-8 of that record.

POINTS AND AUTHORITIES

FIRST

The former adjudications in the state court and in the United States District Court, mentioned in Question I, bar the present suit.

The real question here to be considered, is as to the right of the Pueblo of Laguna to bring a suit concerning its claimed ownership of land. The answer to this is clearly given by the opinion in the case of Lane v. Santa Rosa 249 U. S., 110, 112.

In that case, the court very clearly shows, first, that historically the status of these Pueblos, under Spain and Mexico, was such as to enable them to become suitors for the purpose of enforcing or defending their property interests; and, second, that there is another ground, arising out of our own laws, which is in itself sufficient. If the Pueblo has power to bring a suit it is absurd to say that the decision of that suit is a nullity if the United States is not a party as is now contended by the government. If that were sound, a Pueblo, with its right to bring a suit, declared unmistakably by this court, could gain nothing even if successful. Clearly, if the Pueblo has power to sue, it must be bound by the result as must be its adversary.

By the somewhat meagre statement in the certificate upon which this case is to be heard, it appears that the suit is brought to obtain "a judicial determination of the title of the Pueblo of Laguna to the tract or grant of land set out and described in the bill of complaint:" and also that the suit in the state court was for the purpose of quieting theIndian Title to the land described in the bill of complaint.

It is clear that the subject-matter of the suits is the same and the relief sought is the same, which is to quiet the title to the land in the Pueblo of Laguna. It is now argued that, while the Pueblo had a right to bring its suit, and its interest which entitled it to

maintain the two previous suits, was its property interest derived from the title by patent from the United States, yet the results of the previous suits cannot bar the United States in the present case because the interests of the United States and of the Pueblo are different and distinct, and there can be no privity between them.

I find it difficult to understand the distinction, but it would seem that the contention must be that the interest of the Pueblo which justified the bringing of its suits in its own name, was its claimed interest in the same land which is the subject matter of this, the third suit, as to the claimed interest of the Pueblo, while the interest of the United States is in the discharge of its assumed duty to protect the rights of the Pueblo of Laguna and that this interest is different from the interest of the Pueblo.

With all due respect for the learned counsel who represent the government it seems clear to me that, as applied to this case, this is a distinction without a difference, and is based upon the mere words by which counsel undertake to state their conception of the duty of the United States to the Indians, and upon nothing else. The conceded fact remains that the state court had jurisdiction to enter its judgment, but it is contended that the United States is not affected by the judgment and now must be allowed to re-litigate, in this suit, the same matters which were considered and passed upon by the state court acting within its undoubted jurisdiction.

No case can be found to which can be better applied the doctrine of *"interest republicae ut sit finis litium,"*

The duty of the United States, if there is any, to the Pueblo of Laguna, is to protect the claimed right of the Pueblo to land in the Paguate Purchase, and its interest is as to the Pueblo's right to that land, which is identical with what was litigated by the Pueblo in the state court, within its jurisdiction as complainant concedes at pages 6 and 23-4 of its brief.

As to the question of the binding effect of the former judgment on the right to prosecute the present case, there are authorities which will be found interesting to say the least. They are cited in the brief of appellees in the Circuit Court of Appeals, copies of

which I filed in the present case as a brief for them, as soon as I knew of the certificate of the Circuit Court of Appeals, believing that it would be sufficient to present their contentions herein and would perhaps avoid some expense to my long-suffering and poverty-stricken clients. Upon that brief, however, I still rely and ask the attention of the court thereto, but will not here attempt to reproduce it in full. The cases are the following:

People v. Smith, 93 *Calif.*, 490, 29 *Pac.* 57.
People v. Beaudry, 27 *Pac.*, 610.
Foust v. Huntington, 15 *N. E.*, 337.
Lichty v. Lewis, 63 *Fed.*, 535, 536.
Featherson v. Turnpike Co., 24 *N. Y. S.*, 603, 604-5.
Palmer v. Ins. Co., 30 *N. Y. S.*, 1044, 1049.
Tausiede v. Jumel, 30 *N. E.*, 1000.
Carmody v. Hanick, 85 *Mo. App.*, 659-60.
M'Mullen v. Brown, 2 *Hill Ch.* 457, 460.

In the above cited case of Carmody v. Hanick, the syllabus distinctly states a correct rule, as follows:—

> "Where the interests of parties in the prosecution of a suit are mutual although the suit is in the name of one of the parties, both are represented and both are equally estopped to deny any of the issues adjudicated therein in any suit between them jointly or singly on the one side and the same defendant on the other side."

I submit to the court that the interest of the Pueblo of Laguna and the interest of the United States in the subject matter of these suits, are identical, and the effort to distinguish between them, may properly, without discourtesy, be characterized as but little, if any, better than camouflage

The effort of complainant's counsel at page 12 of their brief, to minify the holding of this court in *Lane vs. Pueblo of Santa Rosa*, 249 *U. S.* 110 is hardly creditable. It is there stated that what was decided in that case, was that the Pueblo of Santa Rosa had capacity to institute and maintain an action to protect its lands from unauthoried encroachments of executive officers. An examination of

the opinion, at page 112, will show that the holding goes much further, and, in effect, declares that all these Indian Pueblos, as bodies corporate, are "capable of suing or defending in respect" of their lands. If capable of suing, the adjudication of their claims, followed by an adverse decision, must be a finality and a bar against the reassertion of those claims against the same defendants, whether such reassertion is by themselves or by any other assuming to act for them.

SECOND

This court has decided that it has no jurisdiction of this controversy.

The second of the cases begun by the Pueblo of Laguna was brought to this court by appeal and dismissed for want of jurisdiction.

Pueblo of Laguna v. Candelaria et al., 257 U. S. 623.

It being clearly established by the decision in *Lane v. Santa Rosa*, 249 U. S. 110 112, that the Pueblo has capacity to sue, an adverse decision is conclusive as to all matters adjudicated in such a suit or which might properly be adjudicated therein.

I do not ignore the distinction sought to be made by opposing counsel, which has been already hereinbefore sufficiently considered, and this second point is made to reinforce the applicability of the maxim that the interest of the public requires that there be an end to litigation .

It is respectfully submitted that the first question by the Circuit Court of Appeals must be answered in the negative and the second question must be answered in the affirmative, so far at least as it applies to this case, where it appears that the judgment of the state Court may have been, and probably was, based upon immemorial possession and not upon any disregard of a survey made by the United States. However, this question is as to the jurisdiction of the state court and should not be extended to whether its judgment was right or wrong.

FRANK W. CLANCY,
Counsel for Appellees.